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9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13
14 In the Matter of the Accusation Against,

Case No. 800-2018-041973

15 **KRISTOPHER MICHAEL MCKAY, M.D.**

16 3560 Independence Drive, Suite 200
Birmingham, AL 35209-5703

**DEFAULT DECISION
AND ORDER**

17 **Physician's and Surgeon's Certificate No.**
18 **A 136446**

[Gov. Code, §11520]

19
20 Respondent.

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22 **FINDINGS OF FACT**

23 1. On or about June 29, 2018, Complainant Kimberly Kirchmeyer, in her official
24 capacity as the Executive Director of the Medical Board of California (Board), filed Accusation
25 No. 800-2018-041973 against Kristopher Michael McKay, M.D. (Respondent) before the Board.

26 2. On or about May 28, 2015, the Medical Board of California issued Physician's and
27 Surgeon's Certificate No. A 136446 to Respondent. The Physician's and Surgeon's Certificate
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1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 November 30, 2018, unless renewed. (Exhibit Package, Exhibit 1¹, License Certification.)

3 3. On or about June 29, 2018, an employee of the Board served by Certified Mail
4 (Certification No. 7012-1010-0003-2775-8477) a copy of Accusation No. 800-2018-041973,
5 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
6 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
7 was and is 3560 Independence Drive, Suite 200, Birmingham, Alabama 95209-5703. The
8 Statement to Respondent advised Respondent that he was required to complete, sign and return a
9 Notice of Defense within fifteen days if he desired a hearing on the charges. (Exhibit Package,
10 Exhibit 2, Accusation Package, Declaration of Service.)

11 4. On or about July 2, 2018, an individual at Respondent's address of record signed and
12 dated the certified mail receipt (Certification No. 7012-1010-0003-2775-8477), confirming
13 personal delivery of Accusation No. 800-2018-041973 to Respondent's address of record.
14 (Exhibit Package, Exhibit 3, Certified Mail Receipt and United States Post Service tracking
15 results for Accusation Package.) Respondent did not submit a Notice of Defense.

16 5. On or about July 16, 2018, an employee of the Attorney General's Office sent by
17 Certified Mail (Certification No. 9414-7266-9904-2124-6767-08) addressed to Respondent at the
18 address of record set forth above a Courtesy Notice of Default. The Courtesy Notice of Default
19 provided Respondent with a copy of the Accusation and Notice of Defense, advised him that he
20 was in default, and cautioned him that a decision would be rendered by the Board without a
21 hearing if he did not take action. (Exhibit Package, Exhibit 4, Courtesy Notice of Default and
22 Declaration of Service.)

23 6. On or about July 20, 2018, an individual at Respondent's address of record signed
24 and dated the certified mail receipt (Certification No. 9414-7266-9904-2124-6767-08),
25 confirming personal delivery of the Courtesy Notice of Default to Respondent's address of
26 record. (Exhibit Package, Exhibit 5, Certified Mail Receipt and United States Post Service
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28 ¹ The evidence in support of this Default Decision and Order is submitted herewith as the
"Exhibit Package."

1 tracking results for Courtesy Notice of Default.) Respondent again did not submit a Notice of
2 Defense. Given that Respondent has not responded to service of the Accusation or the Courtesy
3 Notice of Default by filing a Notice of Defense, he has waived his right to a hearing on the merits
4 to contest the allegations contained in the Accusation.

5 6. The allegations of the Accusation are true as follows:

6 On or about February 20, 2018, the Colorado Medical Board (Colorado Board) issued
7 an Order of Suspension from the Practice of Medicine (Order), suspending Respondent's license
8 to practice medicine in the State of Colorado, effective immediately. The Order was based on the
9 Colorado Board's review of allegations of Respondent's use of illegal controlled substances and
10 possible physical or mental illness and/or condition. Following its review, the Colorado Board
11 determined on or about December 14, 2017, that Respondent was unable to practice medicine
12 with reasonable skill and safety to patients. Accordingly, Respondent was ordered to complete an
13 evaluation with the Colorado Physician Health Program (CPHP), which included appearing for all
14 appointments. However, on or about January 3, 2018, Respondent failed to appear for his
15 scheduled intake appointment with CPHP, thereby violating an order of the Colorado Board. A
16 copy of the Order issued by the Colorado Board is attached to the Accusation, Exhibit 2 of the
17 Exhibit Package.

18 **STATUTORY AUTHORITY**

19 7. Section 2305 of the Code provides, in part, that the revocation, suspension, or other
20 discipline, restriction or limitation imposed by another state upon a license to practice medicine
21 issued by that state, or the revocation, suspension, or restriction of the authority to practice
22 medicine by any agency of the federal government, that would have been grounds for discipline
23 in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional
24 conduct.

25 8. Section 141 of the Code provides:

26 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
27 department, a disciplinary action taken by another state, by any agency of the federal government,
28 or by another country for any act substantially related to the practice regulated by the California

1 license, may be a ground for disciplinary action by the respective state licensing board. A
2 certified copy of the record of the disciplinary action taken against the licensee by another state,
3 an agency of the federal government, or by another country shall be conclusive evidence of the
4 events related therein.

5 “(b) Nothing in this section shall preclude a board from applying a specific statutory
6 provision in the licensing act administered by the board that provides for discipline based upon a
7 disciplinary action taken against that licensee by another state, an agency of the federal
8 government, or another country.”

9 9. Pursuant to its authority under Government Code section 11520, the Board finds
10 Respondent is in default. The Board will take action without further hearing and, based on
11 Respondent’s express admissions by way of default and the evidence before it, contained in
12 Exhibits 1 through 5, finds that the allegations in Accusation No. 800-2018-041973 are true.

13 **DETERMINATION OF ISSUES**

14 10. Pursuant to the foregoing Findings of Fact, Respondent’s conduct, and the action of
15 the Colorado Medical Board constitute cause for discipline within the meaning of Business and
16 Professions Code sections 2305 and 141, subdivision (a).

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ordered on **August 23**, 2018.

By Kimberly Kirchmeyer
KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JUNE 29 2018
BY [Signature] ANALYST

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2018-041973

11 **Kristopher Michael McKay, M.D.**

A C C U S A T I O N

12 3560 Independence Drive, Suite 200
13 Birmingham, AL 35209-5703

14 **Physician's and Surgeon's Certificate**
15 **No. A 136446,**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California (Board).

22 2. On or about May 28, 2015, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A 136446 to Kristopher Michael McKay, M.D. (Respondent). The
24 Physician's and Surgeon's Certificate will expire on November 30, 2018, and is SUSPENDED by
25 virtue of an Out of State Suspension Order issued on May 4, 2018 pursuant to Business and
26 Profession Code section 2310(a).

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

C. Section 141 of the Code provides:

“(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

“(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.”

CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On February 20, 2018, the Colorado Medical Board (Colorado Board) issued an Order of Suspension from the Practice of Medicine (Order). The Order contains the following factual findings:

- a. On or about December 14, 2017, the Colorado Board reviewed allegations regarding Respondent's use of illegal controlled substances and possible physical or mental illness and/or condition. Based on its review, the Colorado Board determined that Respondent was unable to practice with reasonable skill and safety to patients. Accordingly, Respondent was ordered to complete an evaluation with the Colorado Physician Health Program (CPHP).
- b. On or about December 19, 2017, the Colorado Board ordered Respondent to submit to a mental or physical examination with CPHP, which included appearing for all appointments with CPHP.
- c. On or about January 3, 2018, Respondent failed to appear for his scheduled intake appointment with CPHP, thereby violating an order of the Colorado Board.

A true and correct copy of the Order issued by the Colorado Board is attached as Exhibit A.

5. Respondent's license to practice medicine in the State of Colorado is subject to the following terms pursuant to the Order: Respondent's license to practice medicine is suspended. The suspension shall remain in effect until Respondent is in full compliance with CPHP's evaluation efforts, including satisfying all recommendations made by CPHP, and CPHP has provided sufficient verification to the Colorado Board that Respondent is in full compliance. The suspension shall not be terminated until the Colorado Board has reviewed a final evaluation issued by CPHP establishing that Respondent is safe to practice medicine with reasonable skill and safety to patients, and Respondent has received written notice from the Colorado Board that the suspension has been lifted.

6. Respondent's conduct and the action of the Colorado Board, as set forth in paragraphs 4 and 5 above, constitute cause for discipline pursuant to sections 2305 and/or 141 of the Code.

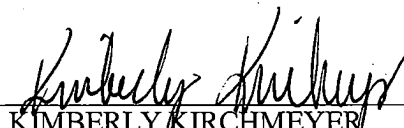
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 136446, issued to Kristopher Michael McKay, M.D.;

- 1 2. Revoking, suspending or denying approval of Kristopher Michael McKay, M.D.'s
2 authority to supervise physician assistants and advanced practice nurses;
3 3. Ordering Kristopher Michael McKay, M.D., if placed on probation, to pay the Board
4 the costs of probation monitoring; and
5 4. Taking such other and further action as deemed necessary and proper.

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7 DATED: June 29, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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EXHIBIT A

BEFORE THE COLORADO MEDICAL BOARD
STATE OF COLORADO

Case No. 2017-7183-A



**ORDER OF SUSPENSION FROM THE PRACTICE OF MEDICINE,
PURSUANT TO SECTION 12-36-118(9)(A), C.R.S.**

IN THE MATTER OF THE LICENSE TO PRACTICE MEDICINE AS A PHYSICIAN IN
THE STATE OF COLORADO OF KRISTOPHER M. MCKAY, M.D., LICENSE NUMBER
DR-57935,

Respondent.

TO: KRISTOPHER M. MCKAY, M.D.

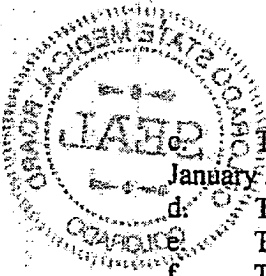
THIS MATTER came before Inquiry Panel A ("Panel") of the Colorado Medical Board ("Board") as Board Case Number 2017-7183-A, on February 14, 2018. After careful review and consideration, the Panel has reasonable cause to believe and finds that Kristopher M. McKay, M.D. ("Respondent") failed to comply with a valid Board Order issued pursuant to Section 12-36-118(9)(a), C.R.S., and orders that the license to practice medicine as a physician in the State of Colorado of Kristopher M. McKay, M.D., be suspended summarily pursuant to Section 12-36-118(9)(a), C.R.S. In support of this Order of Suspension from the Practice of Medicine ("Order of Suspension"), the Panel finds as follows:

1. Respondent is licensed to practice medicine as a physician in the state of Colorado pursuant to license number DR-57935, which was issued on or about January 3, 2017.

2. On or about December 14, 2017, the Panel reviewed all matters set forth in case number 2017-7183-A. Specifically, the Panel reviewed information involving Respondent's alleged use of illegal controlled substances and possible physical or mental illness and/or condition. Based on this information and the totality of the circumstances, the Panel had reasonable cause to believe that Respondent was unable to practice with reasonable skill and safety to patients because of a condition listed in Section 12-36-117(i) or (o), C.R.S., or Section 12-36-118.5(1), C.R.S. Accordingly, the Panel ordered Respondent to complete an evaluation with the Colorado Physician Health Program ("CPHP").

3. On or about December 19, 2017, the Panel issued an Order Pursuant to Section 12-36-118(9)(a), C.R.S. ("Order") requiring respondent to submit to a mental or physical examination by CPHP. The Order to CPHP required Respondent:

- a. To contact CPHP no later than December 24, 2017;
- b. To execute no later than December 24, 2017, all releases to allow unrestricted communication between CPHP and the Panel;



To schedule and attend an initial intake appointment with CPHP no later than January 30, 2017;

- d. To appear for all appointments with CPHP;
- e. To provide any information requested by CPHP;
- f. To schedule timely appointments as requested or recommended by CPHP;
- g. To otherwise cooperate fully with CPHP; and
- h. To continue to cooperate fully with CPHP and to comply with any and all requests or recommendations CPHP deems appropriate to facilitate any and all examinations necessary to determine if Respondent is unable to practice medicine with reasonable skill and safety to patients because of a condition described in sections 12-36-117(1)(i) or (o), C.R.S., or section 12-36-118.5(1), C.R.S.

4. On February 14, 2018, the Panel reviewed a report from the Colorado Physician Health Program ("CPHP") dated January 12, 2018. The CPHP report noted that CPHP had scheduled Respondent's intake appointment for January 3, 2018.

5. Respondent failed to attend the January 3, 2018 appointment.


6. Pursuant to the Order to CPHP and Section 12-36-118(9)(a), C.R.S., Respondent's failure to comply with the requirements of the Order to CPHP is grounds for suspension. The Panel finds that Respondent has failed to comply with CPHP's requirement for evaluation and thus has failed to comply with the requirements of the Order to CPHP.

7. Pursuant to Section 12-36-118(9)(a), C.R.S., the Panel is authorized to suspend Respondent's license to practice medicine in the State of Colorado until the required examinations are conducted and pending further disciplinary proceedings.

THEREFORE IT IS ORDERED, in accordance with Section 12-36-118(9)(a), C.R.S., that the license to practice medicine of Kristopher M. McKay, M.D., is suspended effective 4:00 p.m. on February 20, 2018. Such suspension shall remain in effect until such time as Respondent has met the recommendations made by CPHP. Respondent has come into compliance with CPHP's evaluation efforts, CPHP has provided adequate confirmation to the Panel of Respondent's full compliance with the Board's Order to CPHP and Respondent has received written notice from the Board that the suspension has been vacated. The suspension shall not be terminated until the Panel has reviewed, at the next regularly scheduled meeting after submission, a final evaluation and report issued by CPHP establishing that Respondent has complied with the Panel's Order and is safe to practice medicine with reasonable skill and safety to patients.

DATED AND SIGNED this 20th day of February 2018:

FOR THE COLORADO MEDICAL BOARD
INQUIRY PANEL A


~~For~~ Paula E. Martinez
Program Director
Pursuant to authority delegated by Inquiry Panel A